



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 210504-0099]

RIN 0648-BK22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery of the Atlantic; Amendment 12

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 12 to the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery of the Atlantic (Dolphin Wahoo FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule adds bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP and designates them as ecosystem component (EC) species. The purpose of this final rule and Amendment 12 is to acknowledge the ecological role of bullet mackerel and frigate mackerel as forage fish and to achieve the ecosystem management objectives in the Dolphin Wahoo FMP.

DATES: This final rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 12, which

includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-12-add-bullet-mackerel-and-frigate-mackerel-ecosystem-component-species>.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727-824-5305, or email: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: The dolphin and wahoo fishery of the Atlantic is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On January 29, 2021, NMFS published a notice of availability for Amendment 12 and requested public comment (86 FR 7524). NMFS approved Amendment 12 on April 26, 2021. On March 2, 2021, NMFS published a proposed rule for Amendment 12 and requested public comment (86 FR 12166). The proposed rule and Amendment 12 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 12 and implemented by this final rule is described below.

Background

The Council manages dolphin and wahoo under the Dolphin Wahoo FMP in Federal waters off the Atlantic states from Maine south to the Florida Keys in the Atlantic. In

the western North Atlantic, bullet mackerel are found from Cape Cod to the Gulf of Mexico, and frigate mackerel are found mostly from North Carolina to Florida. As described in Amendment 12, both bullet mackerel and frigate mackerel are found in the diets of dolphin and wahoo in the North Atlantic. In particular, wahoo has been demonstrated to have a strong dietary reliance on bullet mackerel and frigate mackerel, indicating that these mackerel species are the most dominant forage species observed in the diets of wahoo. Dolphin tend to have more diverse diets than wahoo and have a lower reliance on these mackerel species as prey. Additionally, bullet mackerel and frigate mackerel have been identified as important forage species for other offshore pelagic predatory species in the Atlantic such as blue marlin and yellowfin tuna. Bullet mackerel feed on a variety of prey, especially clupeoids (*i.e.*, herrings and sardines), crustaceans, and squids. Frigate mackerel feed on a variety of fish, squid, and small crustaceans. Therefore, given their presence as a common forage fish and prey food source, bullet mackerel and frigate mackerel are an important component of the marine environment in the Atlantic. There is no stock assessment for dolphin, wahoo, bullet mackerel, or frigate mackerel. In Atlantic Federal waters, dolphin and wahoo are targeted both commercially and recreationally. Annual reported commercial and recreational landings of bullet mackerel and frigate

mackerel are low along the entire Atlantic coastline.

Regulations implemented under the Magnuson-Stevens Act define EC species as "stocks that a Council or the Secretary has determined do not require conservation and management, but desire to list in a FMP in order to achieve ecosystem management objectives" (50 CFR 600.305(d)(13)). National Standards (NS) General guidelines state that a Council should consider a non-exhaustive list of 10 factors when deciding whether additional stocks require Federal conservation and management (50 CFR 600.305(c)(1)). The EC designation for bullet mackerel and frigate mackerel was recommended to the Council by the Council's Scientific and Statistical Committee (SSC), their Dolphin Wahoo Advisory Panel (AP), and the Habitat Protection and Ecosystem-Based Management (Habitat) AP, and received extensive positive comments from the public during scoping of Amendment 12. The Dolphin Wahoo AP and Habitat AP members acknowledged that wahoo, in particular, target these mackerel species as prey. The AP members also stated that the Council should consider a conservative approach to ensure there are no major increases in the harvest of bullet mackerel and frigate mackerel in the foreseeable future as a result of any EC designation. This designation addresses the Council's growing emphasis on developing ecosystem management approaches to fisheries management and advancing ecosystem management objectives in the Dolphin Wahoo FMP.

The extent to which the low landings of bullet mackerel and frigate mackerel occur within the dolphin and wahoo fishery is unknown; however, it is unlikely that these species are often harvested in conjunction with efforts to target dolphin and wahoo, especially in the commercial sector. Bullet and frigate mackerel have largely been landed commercially in the Mid-Atlantic region using gill net, pound net, float trap, and otter trawl gear, none of which are allowable gear types in the dolphin and wahoo fishery. Recreational landings of bullet and frigate mackerel have largely occurred in the South Atlantic Region, with some limited catches reported from the Mid-Atlantic Region. Furthermore, recreational fishermen have also noted that these species are used as bait for tuna and billfish, such as blue marlin. NMFS and the Council have determined that bullet mackerel and frigate mackerel are currently not in need of conservation and management, making them eligible for consideration as EC species. This eligibility determination was done after consideration of the provisions within the NS Guidelines and requirements of the Magnuson-Stevens Act. Furthermore, adding bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP as EC species meets the FMP's ecosystem management objectives (50 CFR 600.305(c)(5) and 600.310(d)(1)).

Management Measures Contained in this Final Rule

This final rule adds bullet mackerel and frigate

mackerel to the Dolphin Wahoo FMP and designates them as EC species. This final rule adds no additional management measures to the Dolphin Wahoo FMP as a result of this EC species designation, either for bullet mackerel and frigate mackerel, or for dolphin and wahoo.

The final rule is expected to result in potential indirect benefits such as increased awareness among the fishermen, fishing communities, data collecting agencies, and regulatory entities managing dolphin, wahoo, bullet mackerel, and frigate mackerel. If landings for these two mackerel species were to greatly increase in the future to unsustainable levels, fisheries managers could be made aware of the changing stock status before the stocks are depleted, which may have subsequent beneficial effects on populations of several economically important predatory fish species, including dolphin, wahoo, blue marlin, and yellowfin tuna.

Comments and Responses

NMFS received 24 comments during the public comment period on the notice of availability and proposed rule for Amendment 12. Comment submissions were from the general public, sport-fishing associations, and non-governmental organizations. The majority of the comments were in support of adding bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP as EC species. NMFS acknowledges the comments in favor of the action in the notice of

availability and proposed rule and agrees with them. One comment was outside the scope of Amendment 12 and is not responded to in this final rule. Comments in opposition and that requested additional information about the action contained in the notice of availability and proposed rule are summarized below, along with NMFS' responses.

Comment 1: NMFS and the Council should consider more proactive methods of monitoring the conditions of bullet and frigate mackerel and collect more data to study abundance and population trends.

Response: NMFS agrees that more data would aid in obtaining a better understanding of abundance and population trends for bullet mackerel and frigate mackerel. However, these species are not directly targeted by commercial and recreational fishers in the Atlantic. Commercial landings of bullet mackerel and frigate mackerel have been variable, but typically are relatively low, averaging 4,395 lb (1,994 kg), round weight, annually over the past 20 years of available data (1999 through 2018), 1,569 lb, (712 kg), round weight, annually over the past 10 years (2009 through 2018), and 1,939 lb (880 kg), round weight, over the past 5 years (2014 through 2018). Recreational landings have been variable and sporadic, averaging 1,189 lb (539 kg), round weight, for bullet mackerel, and 3,569 lb (1,619 kg), round weight, for frigate mackerel annually over the past 20 years of

available data (1999 through 2018).

In terms of data collection, vessels with Federal commercial dolphin wahoo permits already report all landings that are sold to a federally permitted dealer, including species that are not federally managed. Beginning January 4, 2020, the final rule for the South Atlantic for-hire electronic reporting program requires that federally permitted for-hire snapper-grouper, dolphin wahoo, and coastal migratory pelagic vessels in the Atlantic report all landings including species that are not subject to Federal management (85 FR 47917; August 7, 2020). The Marine Recreational Information Program captures information on all species caught by recreational fishers. Furthermore, North Carolina has introduced fish identification codes in its state trip ticket forms for these mackerel species since 2018. Public education and awareness of the EC designation may encourage fishers to report landings of these two mackerel species more than before, thereby providing more data. If landings for bullet mackerel and frigate mackerel were to increase in the future, further proactive and active measures within the Council's jurisdiction could be explored in a future amendment.

Comment 2: The proposed rule does not achieve the stated purpose of Amendment 12 to provide awareness regarding bullet mackerel and frigate mackerel, and is a

waste of taxpayer dollars. If there are no benefits for the dolphin and wahoo fishery from this action, then it would make sense that there should be no cost, or at least minimal cost, for this proposed rule. However, NMFS calculates an estimated cost of \$34,499.00 for an action that will have no benefits.

Response: NMFS disagrees that there are no benefits to the action. The purpose of Amendment 12 and its rulemaking is to acknowledge the ecological role of bullet mackerel and frigate mackerel as forage fish by adding them to the Dolphin Wahoo FMP as EC species. Peer-reviewed scientific studies have found scombrids such as bullet mackerel and frigate mackerel are the dominant prey (43.7 percent frequency of occurrence and 41.7 percent by mass) in wahoo diets, showing that wahoo have a high reliance on scombrids and suggesting that wahoo specialize on this prey group, just as they do in other regions throughout their range. Bullet and frigate mackerel are also important in the diets of dolphin, blue marlin, and yellowfin tuna. The action in Amendment 12 brings awareness among the fishers, fishing communities, data collecting agencies, and regulatory entities managing dolphin, wahoo, bullet mackerel, and frigate mackerel. As noted in the response to *Comment 1*, there is very little interest among fishers in these two mackerel species at present, but, if they were to be targeted in the future, adding them in the FMP as EC

species will aid in considering other measures in a future action, if warranted. Indeed, the Mid-Atlantic Fishery Management Council has discussed plans to establish possession limits for bullet mackerel and frigate mackerel. In the western Atlantic, bullet mackerel are found from Cape Cod to the Gulf of Mexico and feed on a variety of prey, especially clupeoids (*i.e.*, herrings and sardines), crustaceans, and squids. Frigate mackerel are mostly found from North Carolina to Florida and feed on a variety of fish, squids, and small crustaceans. By acknowledging the role of bullet mackerel and frigate mackerel in the ecosystem as forage fish, implementation of Amendment 12 will increase ecosystem-wide awareness. NMFS and the Council determined that bullet mackerel and frigate mackerel are currently not in need of conservation and management, and, as such, are eligible for consideration as EC species under provisions found within the NS Guidelines (50 CFR 600.305(c)(1)), in compliance with the requirements of the Magnuson-Stevens Act and other applicable laws.

There are no expected notable effects for the dolphin and wahoo fishery from this action, because bullet mackerel and frigate mackerel are not targeted in this fishery, and are not caught by the gear authorized in the dolphin and wahoo fishery. Landings for these species have been very low over the last 20 years (see response to *Comment 1*). Bullet mackerel and frigate mackerel have largely been

landed commercially in the Mid-Atlantic region using gill net, pound net, float trap, and otter trawl gear, none of which are allowable gear types in the dolphin and wahoo fishery. Recreational catches of bullet mackerel and frigate mackerel have largely occurred in the South Atlantic Region, with some limited catches reported from the Mid-Atlantic Region. Also, recreational fishers have noted that these species are used as bait.

NMFS conducted an economic analysis for Amendment 12 to comply with Executive Order (E.O.) 12866. The analysis estimated costs resulting from this action in the amount of \$34,499.00 (2018 dollars), which are considered minimal. This estimate represents the administrative costs to the Council and NMFS associated with Amendment 12 and this rulemaking as there are no direct costs to the private sector.

In addition, while this final rule is not expected to result in any direct benefits, it is expected to result in indirect benefits. Consistent with Circular A-4 from the Office of Management and Budget, which provides guidance on how to conduct analyses to comply with E.O. 12866, the analysis should consider favorable effects from the rule that are typically unrelated or secondary to the purpose of the rulemaking. If it is not feasible to monetize or quantify such effects, they should at least be considered qualitatively. As discussed in Amendment 12, indirect

economic benefits are expected to arise from designating bullet and frigate mackerel as EC species by enhancing public education and awareness of these species, which in turn is expected to improve data reporting and monitoring of landings. If landings for the two mackerel species greatly increase in the future to unsustainable levels, fisheries managers could be made aware before the stocks are depleted. The ability to preclude such stock depletions is expected to indirectly benefit fisheries for several economically important predatory fish species in the future, including dolphin and wahoo. These indirect benefits were determined to outweigh the minimal administrative costs that have already been largely incurred by the Council and NMFS, and therefore this regulatory action is expected to increase net benefits to the Nation.

Comment 3: Lower landing rates for both bullet mackerel and frigate mackerel are not just because of less interest in fishing for these species. Rather, the population of these species has decreased drastically.

Response: NMFS disagrees. There is no stock assessment available for bullet mackerel or frigate mackerel. Therefore, it is not possible to determine if the populations have decreased or increased in a manner that would negatively or positively affect their stock status. As mentioned in responses to *Comments 1* and *2*, these

species are typically caught incidentally to other species and are not the targets of a directed fishery, which is consistent with the low levels of landings. Adding bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP does meet ecosystem management objectives (50 CFR 600.305(d)(13)). The EC designation recognizes the ecosystem role of these mackerel species as prey for many economically important species such as wahoo and other billfish. Increased awareness of the importance of these species could aid in more data reporting and collection, which would help towards any possible future stock assessment, if necessary.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 12, the Dolphin Wahoo FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this final rule. This final rule contains no information collection requirements under the Paperwork

Reduction Act of 1995. A description of this final rule, why it is being considered, and the purposes of this final rule are contained in the preamble and in the **SUMMARY** section of this final rule. The objective of this final rule is to acknowledge the ecological role of bullet mackerel and frigate mackerel as forage fish in general and specifically as prey for wahoo.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments from SBA's Office of Advocacy or the public regarding the certification in the proposed rule. NMFS received one public comment on the economic analysis in Amendment 12; see *Comment #2* in the preamble. No changes to this final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Atlantic, Dolphin, Ecosystem species, Fisheries, Fishing, Wahoo.

Dated: May 5, 2021.

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*Deputy Assistant Administrator for Regulatory
Programs,*
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part
622 is amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to
read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Add Table 6 to appendix A to part 622 to read as
follows:

Appendix A to Part 622 - Species Tables

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**Table 6 of Appendix A to Part 622--Atlantic Dolphin and
Wahoo**

Dolphin, Coryphaena equiselis or Coryphaena hippurus

Wahoo, Acanthocybium solandri

The following species are designated as ecosystem component
species:

Bullet mackerel, Auxis rochei

Frigate mackerel, Auxis thazard